

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petitions for Redetermination)
Under the Underground Storage Tank)
Maintenance Fee Law of:)
ORANGE TREE FRESH FRUIT & NUTS, INC.) Account Number TK STF 44-046956
Case ID 527202
Riverside, Riverside County
dba Pinnacle Convenience Stations) Account Number TK STF 44-046953
Case ID 527196
Hemet, Riverside County
dba Pinnacle Convenience Stations ARCO AM PM) Account Number TK STF 44-046955
Case ID 527198
San Jacinto, Riverside County
Petitioner)

Type of Business: Gas stations

Audit periods: 04/25/06 – 12/31/08 (Case ID 527202)

08/28/06 – 12/31/08 (Case ID 527196)

04/20/07 – 12/31/08 (Case ID 527198)

ItemDisputed Amounts

Unreported underground \$118,691 (Case ID 527202)

storage tank maintenance fees \$ 90,731 (Case ID 527196)

\$ 69,459 (Case ID 527198)

527202

527196

527198

Fees as determined \$118,690.87 \$ 91,214.77 \$69,459.18

Post-D&R adjustment 00.00 - 483.97 00.00

Proposed redetermination, protested \$118,690.87 \$ 90,730.80 \$69,459.18

Interest through 08/25/13 53,648.12 38,917.55 27,314.03

Total tax and interest \$172,338.99 \$129,648.35 \$96,773.21

Monthly interest beginning 08/26/13 \$ 593.45 \$ 453.65 \$ 347.30

This matter was scheduled for Board hearing in December 2012, but was postponed at petitioner's request to allow additional time to prepare for the hearing. It was rescheduled in January 2013, but was deferred at the request of the Fuel Industry Section of the Property and Special Taxes Department (Department) to allow petitioner time to provide additional documentation. It was then rescheduled again in May, but was postponed at petitioner's request for additional time. Based on its review of the documentation petitioner provided, the Department has recommended an adjustment to one of the Notices of Determination, as more fully described below under "Other Matters."

UNRESOLVED ISSUE

Issue: Whether petitioner is liable for the underground storage tank maintenance fees. We find petitioner is liable.

In November 1997, petitioner was issued seller's permit SR Y EH 97-160624 to operate gas stations. In September 2000, petitioner added, as sub-locations under its seller's permit, the three gas stations at issue herein. It then purchased the property on which the gas stations were located on April 25, 2006 (case ID 527202), August 28, 2006 (case ID 527196), and April 20, 2007 (case ID 527198), and it continued to operate the stations after it purchased the property. However, petitioner did not file any underground storage tank maintenance (USTM) fee returns for any of the three locations until the first quarter of 2009.

In November 2008, the Department became aware that petitioner had purchased two of the stations from BP West Coast Products, LLC (BP). It then conducted a public records search and learned that petitioner had also purchased the third station from the Mazzetti Family 1992 Trust. The Department then mailed USTM fee returns to petitioner for all three sub-locations, requesting that petitioner complete and file the delinquent returns to report its storage of petroleum products in the underground storage tanks at these locations. Since petitioner did not file the returns, the Department conducted audits in which it computed the gallons of fuel purchased based on the amounts of sales tax prepayments petitioner had paid to vendors of fuel, and computed ratios which the Department used to establish the gallons of fuel delivered to each location.

Petitioner does not dispute the Department's audit methodology or its calculation of the amount of petroleum placed in the tanks during the periods at issue. However, petitioner argues that, for the two stations purchased from BP, BP continued to pay the USTM fees even after petitioner purchased the real properties and the tanks. Petitioner has not offered a separate argument regarding the third station purchased from the Mazzetti Family.

There is no dispute that petitioner owned the tanks in question during the liability periods and failed to report and pay the USTM fees that became due as a result of placement of petroleum products into the tanks. Nor has petitioner disputed that, as owner of the tanks, it is the person liable for the USTM fees. As explained under "Other Matters," petitioner has provided evidence that BP West

1 Coast Products continued to pay the UST fee for the Hemet location for three days after petitioner
2 purchased the property on which the station was located. Petitioner has provided no other evidence to
3 support its assertion that the fee was nevertheless paid throughout the liability periods, at least with
4 respect to two of the stations, because an administrative oversight led to continued payment of the
5 USTM fees by BP for the tanks on the properties it sold to petitioner. Furthermore, BP has
6 contradicted this assertion. BP staff stated to the Department that BP stopped paying the USTM fees
7 when the stations were sold, which is consistent with the Board's records which do not show any
8 payments towards the USTM fees at issue here. We find no further adjustments are warranted to the
9 USTM fees asserted against petitioner.

10 **RESOLVED ISSUE**

11 Since petitioner did not file returns, the determinations included failure-to-file penalties of
12 \$11,869.10 (527202), \$9,121.48 (527196), and \$6,945.92 (527198). Petitioner requested relief of the
13 penalties on the grounds that it was unaware of the need to file returns because neither the previous
14 owners of the UST's nor the Board informed petitioner it was required to do so. In a post-conference
15 memorandum, the Department recommended relief of the penalties on the basis that petitioner's failure
16 to file returns resulted from a mistaken, but honest, belief that the previous owners of the tanks were
17 collecting the fees from petitioner and remitting those fees to the Board. We concur, and we
18 recommend relief of the failure-to-file penalties.

19 **OTHER MATTERS**

20 After this matter was scheduled for hearing in January 2013, the Department requested that it
21 be deferred in order to allow time for petitioner to present additional documentation. Based on that
22 documentation, the Department concluded that the predecessor, BP West Coast Products had continued
23 to bill for and report the UST fee for the Hemet location for the period August 28, 2006, through
24 August 30, 2006. The Department therefore recommends an adjustment of 34,569 gallons in the
25 computation of the UST fee. We concur, and that adjustment (a reduction of the fee of \$483.97) is
26 reflected in the table above.

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28 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III